IN THE SUPREME COURT OF THE STATE OF DELAWARE

BALLA KEITA,	§	
	§	No. 493, 2010
Defendant Below-Appellant,	§	
	§	Court Below: Superior Court of the State of Delaware in and for New Castle County
v.	§	
	§	
STATE OF DELAWARE,	§	ID No. 0912000020
	§	
Plaintiff Below-Appellee.	§	

Submitted: October 20, 2010
Decided: December 7, 2010

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

O R D E R

This 7th day of December 2010, it appears to the Court that:

(1) Defendant-Below/Appellant, Balla Keita, appeals from his Superior Court convictions for possession of a narcotic schedule II controlled substance and possession of a non-narcotic schedule IV controlled substance. Keita contends that the strip search of his person was unreasonable because the police lacked particularized suspicion. Because Keita appeals from a completed sentence and has not shown collateral consequences, we dismiss his appeal as moot.

(2) After observing a vehicle make a turn without signaling, Detective John Dudzinski activated his emergency equipment and stopped the vehicle, which contained four occupants, including Keita. Dudzinski determined that none of the

passengers had active warrants, but noticed that Keita had been previously arrested for possession of cocaine. Detective Eric Huston told Dudzinski that he smelled burnt marijuana emanating from the vehicle. Dudzinski observed two partially torn plastic bags in the front passenger area of the vehicle. The detectives searched the occupants of the vehicle and did not find contraband, but Dudzinski detected a marijuana odor on the clothes of one of the passengers, Marcus Carter, who was the left rear seat passenger.

(3) The detectives then searched the vehicle and discovered 0.1 grams of marijuana on the left rear passenger floor. Based on his training and experience, Dudzinski believed that one of the occupants had additional contraband secreted on his person. The detectives transported the four occupants to a nearby police station and conducted strip searches, during which Dudzinski found a plastic bag secreted between Keita's buttocks containing thirty-one Oxycodone pills and twenty-seven Alprazolam pills. The police informed Keita of his *Miranda* rights, and Keita admitted to police that he and the driver of the vehicle, Keith Haynie, had jointly purchased the pills.

(4) Keita was arrested and charged by indictment with possession of a narcotic schedule II controlled substance and possession of a non-narcotic schedule IV controlled substance. The Superior Court held a bench trial, found Keita guilty of both charges, and sentenced him. For the possession of a schedule II narcotic

charge, the Superior Court sentenced Keita to one year at level V, suspended for one year at level IV, suspended in turn after three months for level III. For the possession of a non-narcotic schedule IV charge, the Superior Court sentenced Keita to six months at level V, suspended for one year at level III.

(5) Within a few weeks of sentencing, the Superior Court found Keita guilty of a violation of probation ("VOP") and re-sentenced him to six months at level V, subject to discharge if federal immigration officials took him into custody. Shortly thereafter, Immigration and Customs Enforcement ("ICE") took Keita into its custody.

(6) Where an appeal is moot, we are precluded from reviewing it.[1] In *Harvey v. State*,[2] we held that once a defendant's sentence is complete and he suffers no collateral consequences from that conviction, any appeal of that conviction is moot.[3] In addressing collateral consequences, we explained: "[an] appellant seeking to invoke the collateral consequences exception to the general rule of mootness bears 'the burden of demonstrating specifically a right lost or disability or burden imposed, by reason of the instant conviction which had not

[1] *See Gural v. State*, 251 A.2d 344 (Del. 1969).
[2] 1996 WL 585912 (Del. Oct. 7, 1996).
[3] *See id.* at *1 (citing *Gural*, 251 A.2d at 344–45).

already been lost or imposed by reason of his earlier convictions.'"[4] We also noted that collateral consequences generally do not arise from misdemeanor convictions.[5]

(7) Here, the condition for the discharge of Keita's sentence was satisfied upon ICE taking him into custody.[6] We presume that Keita suffered no collateral consequences from his misdemeanor convictions.[7] Prior to these convictions, Keita was already subject to deportation due to a prior felony conviction for possession with intent to deliver.[8] Because Keita has not shown a collateral consequence from the convictions in this case, his appeal is moot.

NOW, THEREFORE, IT IS ORDERED that this appeal is **DISMISSED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[4] *Id*. at *1 (quoting *Gural*, 251 A.2d at 345).
[5] *See id*. at *2 (citing *Naylor v. Superior Court*, 558 F.2d 1363, 1366 (9th Cir. 1977)).
[6] The VOP Sentence Order stated: "Discharge if [ICE] takes [Keita] into custody."
[7] *See Harvey*, 1996 WL 585912, at *2.
[8] *See* 8 U.S.C. § 1227.